

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FLYING DOG BREWERY, LLLP,

Plaintiff,

v

No. 1:11-cv-307

MICHIGAN LIQUOR CONTROL COMMISSION,
NIDA SAMONA, DONALD WEATHERSPOON,
PATRICK GAGLIARDI, COLLEEN POBUR, and
EDWARD GAFFNEY,

HON. ROBERT J. JONKER

Defendants.

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AFFIDAVIT OF NIDA SAMONA, CHAIRPERSON,
MICHIGAN LIQUOR CONTROL COMMISSION

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

Affiant, Nida Samona, being first duly sworn, deposes and states as follows:

1. I am the duly appointed Chairperson of the Michigan Liquor Control Commission, the administrative body in charge of regulating the licensing, transportation, consumption, furnishing, and sale of alcoholic liquor in the State of Michigan pursuant to the Michigan Liquor Control Code (Code), MCL 436.1101 *et seq.*

2. I have personal knowledge or information concerning the following facts and, if called upon, can testify competently to these facts under oath in a court of law.

3. On November 18, 2009, Commissioner Donald Weatherspoon and I denied Flying Dog Brewery's request for registration of "Raging Bitch" beer. We denied the request because the name, text and the drawing on the label, taken as a whole, promotes sexism and is detrimental to the health, safety, or welfare of the general public under R 436.1611(1)(d). This decision was later affirmed by the Commission on July 7, 2010.

4. The "Raging Bitch" label caricaturizes a wild female dog to portray women as wild animals that must be tamed. The female dog has her behind exposed with her vagina showing, clearly illustrated and facing the viewer.

5. "Raging Bitch" is a gender-specific insult, used to denigrate women by classifying them as less than human. This label condones and promotes a social hierarchy based on sex and may incite rage. It is an offensive, stereotypical, sexist, derogatory, and demeaning portrayal of women.

6. The label text begins with "Two Inflammatory words . . . Raging Bitch" then continues "enjoying a Raging Bitch, unleashed, untamed, unbridled – and in heat."

7. The full text of the "Raging Bitch" label (attached to this affidavit) suggests that a woman's actions are subject to the will of someone in "control" of her, that she is pleading to be released and that, once given freedom, her "unleashed, untamed, unbridled, and in heat" nature is something to be enjoyed to her detriment.

8. The female dog is correlated to a female; "Let it out. It is cruel to keep a wild animal locked up" continues the label.

9. In general, beer sold by licensed retailers in Michigan must pass through Michigan's three-tier alcoholic beverage distribution system. This system consists of suppliers, wholesalers, and retailers. Thus, Flying Dog, as a supplier, sells its beers that are registered in Michigan to wholesalers, who then sell them to retailers.

10. "Off-premises" retailers, such as grocery stores, gas stations, and party stores, sell alcohol for consumption off their premises. "On-premises" retailers, such as restaurants and bars, sell alcohol for consumption on their premises.

11. Over 16,000 locations are licensed for retail sales in Michigan. Children frequent many of these locations and would be exposed to this highly offensive and degrading product name, label, and narrative if approval is allowed. Additionally, because the name and label text promote sexist treatment and objectification of women, they are harmful to adults as well.

12. Because this offensive label is harmful to adults and children alike, there is no way for the Commission to further tailor its restriction and still achieve its goal.

13. In my tenure as a member of the Liquor Control Commission, the Commission has attempted to consistently deny approval of labels containing the word "bitch" for those reasons.

14. We have approved nearly 20 other labels from Flying Dog Brewery and none of those labels had any drawings of human genitalia.

15. One of the many reasons that alcoholic beverages are so closely regulated is that alcohol is an intoxicant. As such, alcohol use can impair judgment and lead to irrational behavior, which may incite action, rage, and violence against women.

16. The Code and administrative rules promulgated by the Liquor Control Commission enable the State of Michigan to protect the health, safety, and welfare of its citizens through careful control and regulation of intoxicating liquors.

17. The public would suffer irreparable harm if this Court issues a Preliminary Injunction. Among other reasons, the harm the Commission is attempting to prevent would

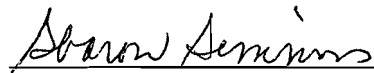
occur; also, it would be cost prohibitive for wholesalers and retailers given that they could no longer sell the product they have purchased if the State later prevails in the case.

18. If Plaintiff is allowed to sell or furnish its product the public interest will be harmed due to the nature of the product name and label text, and such a ruling would interfere with the Commission's performance of its duties to control the distribution, consumption, sale and furnishing of alcohol in this state.

Further, Affiant sayeth not.


Nida Samona

SUBSCRIBED AND SWORN to before
me this 5th day of May, 2011.


Sharon Simmons
Notary Public, Livingston County, MI
Acting in Oakland County, Michigan
My Commission Expires: 9/13/16

Sharon S. Simmons
Notary Public - State Of Michigan
Livingston County
*Acting in Oakland County, MI
My Commission Expires: 9-13-16

20th
ANNIVERSARY

"Two inflammatory words... one wild drink. Nectar imprisoned in a bottle. Let it out. It is cruel to keep a wild animal locked up. Uncap it. Release it...stand back!! Wallow in its golden glow in a glass beneath a white foaming head. Remember, enjoying a RAGING BITCH, unleashed, untamed, unbridled - and in heat - is pure GONZO!! It has taken 20 years to get from there to here. Enjoy!" - Ralph Steadman

8.3% ALC/VOL IBU: 60

RAGING BITCH

BELGIAN-STYLE INDIA PALE ALE



12 FL. OZ.
(355 ml)

BREWED BY
FLYING DOG BREWERY,
FREDERICK, MD

FLYINGDOGALES.COM

CA REDEMPTION VALUE
VT-MA-CT-NY-HI-IA-DE-OR-ME 5¢
MI 10¢ DEPOSIT OK+FL

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

